United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 18, 2005

TO: Cornele A. Overstreet, Regional Director
Region 28

FROM: Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Local Joint Executive Board of Las Vegas
Cases 28-CB-6209, 28-CB-6210, 28-CE-58
536-2507
584-1250
584-3700

This resubmission raises issues arising out of a Union's attempt to apply a "neutrality agreement" with a signatory employer to properties recently acquired by the signatory's parent company. The issues are [*FOIA Exemptions 2, 5 and 7(E)*

]; and whether the Union violated Section 8(b)(3) by asserting that the signatory's collective bargaining agreement replaced the collective bargaining agreement that the Union already had in place at one of the recently acquired properties.

[*FOIA Exemptions 2, 5 and 7(E)*

,][1] [*FOIA Exemptions 2, 5 and 7(E)*

.] We further conclude that the Section 8(b)(3) charge should be dismissed.

FACTS

Boyd (the Employer) is the parent company of Mare-Bear, which it created in 1985 to run the Stardust Casino, located on the Las Vegas "Strip." Stardust had a long-standing collective bargaining relationship with the Local Joint Executive Board of Las Vegas (the Union). Pursuant to the Owners and Successors clause in Stardust's CBA with the Union, Mare-Bear assumed Stardust's contract. The Stardust collective bargaining agreement contains a union security clause, but also has a provision recognizing that the provision is inoperative based on Nevada's right-to-work statute.[2]

In 1989, Mare-Bear and the Union began negotiating a new contract for Stardust. During these negotiations, the Union proposed a modification to the "owners clause" and, for the first time, a neutrality agreement. The Union essentially sought to amend the definition of Employer to include parents and subsidiaries of the Employer and to bind the Employer, its parents, and all their subsidiaries located in the greater Las Vegas area to a neutrality agreement. According to recently obtained evidence from the parties, the Union sought the broad ownership clause and neutrality agreement in order to expand unionization in the growing Las Vegas casino industry and not to further the interests of the existing unit employees. Mare-Bear eventually agreed to those terms. The agreed-upon 1989 owners clause and neutrality clause language remains in the current contract, effective from 2002 to 2007.

The Stardust ownership clause, Section 28.01, provides in relevant part:

> This Agreement shall cover all employees employed in classifications listed in Exhibit 1 in

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[1] [*FOIA Exemptions 2, 5 and 7(E)*
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[2] Nev. Rev. Stat. §§ 613.250, 613.260.

> operations within the jurisdiction of the Union, in Greater Las Vegas, Nevada, which during the term of this Agreement, are owned by, or operated by or substantially under the control of the Employer. The term "Employer" shall be deemed to include any person, firm, partnership, corporation, joint venture or other legal entity substantially under the control of the Employer covered by this Agreement, or one or more principal(s) of the Employer covered by this Agreement, or a subsidiary of the Employer covered by this Agreement, or any person, firm[,] partnership, corporation, joint venture or other legal entity which substantially controls the Employer covered by this Agreement.

The new owners' language arguably binds Mare-Bear's parents, as well as properties in Greater Las Vegas owned by the parents, to the agreement.

The Stardust neutrality agreement provides that if a majority of employees within the unit join the Union or designate it through a card check, "the Employer will recognize the Union as such representative of the employees and will extend to such employees this collective-bargaining agreement between the Union and the Employer together with any amendments agreed to by the parties." The term "Employer" expressly refers to the definition in Section 28.01. Any disputes over the interpretation of the agreement are to be submitted to a designated arbitrator.

The Union also has a long-standing collective bargaining relationship with Barbary Coast Casino, also located on the Strip. During 1989 negotiations with Barbary Coast, the Union proposed an owners clause and a neutrality clause similar to that proposed to Mare-Bear. Barbary Coast did not agree to the new language. Barbary Coast eventually agreed to an ownership provision, Section 26.01, which, unlike the Stardust agreement, clearly applies only to entities "substantially under the control of the Employer."

Barbary Coast also agreed to a neutrality agreement covering employees working at any operations covered by Section 26.01. Unlike the Stardust Agreement, however, the Barbary Coast neutrality agreement does not apply to facilities in greater Las Vegas but only to facilities in Downtown Las Vegas and the Strip.

Between 1996 and 2000, Coast Casinos purchased four casinos, including Barbary Coast, Gold Coast, Sun Coast, and Orleans. Gold Coast, Sun Coast and Orleans are located

outside of the Strip and Downtown Las Vegas. The Union has never represented employees at any of these three casinos.

On July 1, 2004, Boyd merged with Coast Casinos, which became a wholly-owned subsidiary of Boyd. Coast maintained its corporate structure and identity. Pursuant to a provision in the Barbary Coast contract, Boyd immediately assumed the Barbary Coast agreement.

On July 2, 2004, the Union sent a letter to Mare-Bear and to Boyd stating that, as a result of the Boyd-Coast merger, the Stardust agreement had to be applied to Barbary Coast, Gold Coast, Sun Coast, and Orleans. The Union recognized that it would need to show majority support at the latter three casinos but claimed that because the Union already represented Barbary Coast employees, the Stardust Agreement automatically extended there.

The Employer rejected the Union's position, claiming that the Barbary Coast Agreement was still in effect and that the terms of that agreement exclude the application of the neutrality agreement to Gold Coast, Suncoast, and Orleans based on their location outside of the Strip and Downtown Las Vegas. The Union responded by demanding that Mare-Bear and Boyd participate in expedited arbitration under the Stardust neutrality agreement. When Boyd refused to arbitrate, the Union filed a Petition and Complaint to Compel Labor Arbitration in the United States District Court for the District of Nevada, arguing that Mare-Bear and Boyd had an obligation to abide by the Stardust neutrality agreement and to arbitrate unresolved disputes.

On September 1, 2004, Boyd filed a motion to dismiss the district court proceeding on the ground that it was not a party to or signatory to the Stardust CBA, which reflects the Employer as Mare-Bear d/b/a Stardust. On September 23, Boyd filed a separate action in federal court seeking a declaration that the Barbary Coast agreement was in full force and effect and that both Boyd and the Union were bound to that agreement.

On December 15, 2004, Boyd and the Union executed a stipulation agreeing that the Barbary Coast contract was in effect and that Boyd and the Union were bound to abide by that agreement at Barbary Coast. However, the Union still asserts that, under the Stardust owners and neutrality provisions, Boyd was required to apply the Stardust agreement to Gold Coast, Sun Coast, and Orleans because Barbary Coast's neutrality agreement applies only to entities owned by Barbary Coast, not to parent or sister companies.

On March 23, 2005, the district court denied Boyd's motion to dismiss, concluding that it did not appear certain that the Union would not be entitled to relief under any set of facts that could be proven. It was possible, for instance, that Boyd might be bound by the Stardust agreement under an agency or alter ego theory. The district court proceeding is thus ongoing. After the dismissal of its motion, Boyd filed an Answer asserting, among other defenses, [*FOIA Exemptions 2, 5 and 7(E)*

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Meanwhile, on December 22, 2004, Boyd and Coast filed charges alleging that the Union, through its lawsuit, was violating Section [*FOIA Exemptions 2, 5 and 7(E)]* and 8(b)(3) by attempting to apply the collective bargaining agreement between the Union and Mare-Bear to the employees of Barbary Coast, Gold Coast, Sun Coast, and Orleans and by repudiating the collective bargaining agreement between the Union and Barbary Coast. [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[3] [*FOIA Exemptions 2, 5 and 7(E)*
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[4] [*FOIA Exemptions 2, 5 and 7(E)*

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[5] [*FOIA Exemptions 2, 5 and 7(E)*.]

[6] [*FOIA Exemptions 2, 5 and 7(E)*

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[7] [*FOIA Exemptions 2, 5 and 7(E)*

[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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.][11] [*FOIA Exemptions 2, 5 and 7(E)*

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FOIA Exemptions 2, 5 and 7(E)-continued

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[8] [*FOIA Exemptions 2, 5 and 7(E)*

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[9] [*FOIA Exemptions 2, 5 and 7(E)*

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[10] [*FOIA Exemptions 2, 5 and 7(E)*

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[11] [*FOIA Exemptions 2, 5 and 7(E)* .]

[12] [*FOIA Exemptions 2, 5 and 7(E)* .]

[*FOIA Exemptions 2, 5 and 7(E)*,[13]

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[*FOIA Exemptions 2, 5 and 7(E)*

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[13] [*FOIA Exemptions 2, 5 and 7(E)*.]

[14] [*FOIA Exemptions 2, 5 and 7(E)*

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[15] [*FOIA Exemptions 2, 5 and 7(E)*.]

[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[16] [*FOIA Exemptions 2, 5 and 7(E)*

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[17] [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[FOIA Exemptions 2, 5, and 7(E)

.][18] [*FOIA Exemptions 2, 5 and 7(E)*

.][19] [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[18] [*FOIA Exemptions 2, 5 and 7(E)*

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[19] [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[20] [*FOIA Exemptions 2, 5 and 7(E)*

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[21] [*FOIA Exemptions 2, 5 and 7(E)*

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[22] [*FOIA Exemptions 2, 5 and 7(E)*.]

[23] [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[24] [*FOIA Exemptions 2, 5 and 7(E).*]

[25] [*FOIA Exemptions 2, 5 and 7(E)*

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[26] [*FOIA Exemptions 2, 5 and 7(E)*

[*FOIA Exemptions 2, 5 and 7(E)-continued*
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[*FOIA Exemptions 2, 5 and 7(E)*

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[27] [*FOIA Exemptions 2, 5 and 7(E)*

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[28] [*FOIA Exemptions 2, 5 and 7(E)*.]

[29] [*FOIA Exemptions 2, 5 and 7(E)*

[*FOIA Exemptions 2, 5 and 7(E)-continued*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

FOIA Exemptions 2, 5 and 7(E)-continued

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[30] [*FOIA Exemptions 2, 5 and 7(E)* .]

[31] [*FOIA Exemptions 2, 5 and 7(E)* .]

[32] [*FOIA Exemptions 2, 5 and 7(E)*

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.][33] [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*,[35]

.][36] [*FOIA Exemptions 2, 5 and 7(E)*

.][37] [*FOIA Exemptions 2, 5 and 7(E)*

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[33] [*FOIA Exemptions 2, 5 and 7(E)*

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[34] [*FOIA Exemptions 2, 5 and 7(E)*

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[35] [*FOIA Exemptions 2, 5 and 7(E)*.]

[36] [*FOIA Exemptions 2, 5 and 7(E)*.]

[37] [*FOIA Exemptions 2, 5 and 7(E)*

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[38] [*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[*FOIA Exemptions 2, 5 and 7(E)*

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[39] [*FOIA Exemptions 2, 5 and 7(E)* .]

[40] [*FOIA Exemptions 2, 5 and 7(E)*

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[41] [*FOIA Exemptions 2, 5 and 7(E)*

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[42] [*FOIA Exemptions 2, 5 and 7(E)*

[*FOIA Exemptions 2, 5 and 7(E)*

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3. Section 8(b)(3) Charge.

The Employer argues that the Union violated Section 8(b)(3) by repudiating the Barbary Coast collective bargaining agreement and seeking to apply the Stardust agreement to the Barbary Coast employees, in two July 2004 letters to the Employer and through its lawsuit.

The Section 8(b)(3) charge should be dismissed. First, while the Union may have attempted to repudiate the collective bargaining agreement in its July 2004 letters to the Employer, wherein it asserted that the Stardust agreement applied to the Barbary Coast employees, the parties have subsequently stipulated that the Barbary Coast agreement is in full force and effect. Thus, it would not effectuate the policies of the Act to issue complaint based upon the Union's earlier position, particularly where the Union never stopped abiding by the Barbary Coast agreement.

Second, the Employer's contention that the Union's attempt to apply the Stardust neutrality agreement to Sun Coast, Gold Coast, and Orleans constitutes a repudiation of the Barbary Coast agreement is without merit. The Union's claim that the Stardust agreement applies to the three former Coast casinos is based on the language of the Stardust and Barbary Coast neutrality agreements, not on a claim that the Barbary Coast agreement is not in effect. Thus, the Union argues that the Barbary Coast agreement does not apply to Sun Coast, Gold Coast, and Orleans because that ownership provision applies only to hotels "acquired by" Barbary Coast, not when Barbary Coast or any of its sister hotels are acquired by others. The Union's

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[*FOIA Exemptions 2, 5 and 7(E)-continued*
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[43] [*FOIA Exemptions 2, 5 and 7(E)*

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contract interpretation thus does not constitute an attempt to repudiate the Barbary Coast agreement but is a reasonable argument that the Barbary Coast neutrality agreement is inapplicable to the three sister hotels.[44] Accordingly, the Section 8(b)(3) charge should be dismissed.

In sum, as set forth above, the Region [*FOIA Exemptions 2, 5 and 7(E)*]and should dismiss the Section 8(b)(3) charge.

B.J.K.

[44] See Bill Johnson's Restaurants v. NLRB, 461 U.S. 731, 748-49 (1983).